



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 1446-99
21 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 24 September 1991. On 15 April 1996, the Record Review Panel made preliminary findings that you were unfit for duty because of a lower back condition rated at 10% under Department of Veterans Affairs (VA) code 5293. You accepted those findings on 29 April 1996, and waived your right to a formal hearing before a physical evaluation board. You were discharged with entitlement to disability severance pay on 5 June 1996. On 24 July 1998, the VA awarded you a 40% rating under VA code 5293, for severe intervertebral disc syndrome, with recurring attacks and little intermittent relief. The VA rating was based on the results of examinations conducted on 4 March 1998, more that 18 months following your discharge.

The Board noted that ratings assigned by the Navy are fixed as of the date of separation or permanent retirement, absent evidence of material error or injustice and action by the Board. The VA, however, may raise or lower a veteran's disability rating throughout his lifetime to account for any change in the severity of a rated condition which occurs over time. The Board was not persuaded that your back condition was severe at the time of your discharge

from the Navy in 1996, or that you otherwise met the criteria for a rating in excess of 10% for that condition. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director